IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21050 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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TARABEN MANHARLAL GANDHI & 1 - Petitioners
Versus
STATE OF GUJARAT - Respondent

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Appearance :
MR BHAVIN J SATWARA for Petitioners
MR KL PANDYA, A.G.P. for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 25/08/2006

ORAL JUDGMENT

1. **Rule.**

Mr.K.L.Pandya, learned Assistant Government Pleader appears and waives service of notice of rule on behalf of the respondent – State of Gujarat.

2. By filing instant petition under Articles 226 and 227 of the Constitution of India, the petitioners seek to challenge the order dated 31.08.2005 recorded below application seeking exemption from payment of the Court fees in Misc. Civil Application No. 83 of 2004, by the learned Senior Civil Judge, Morbi, Rajkot by which the application filed by the petitioners has been rejected on the ground that the petitioners have not filed affidavit.

3. The petitioners are heirs and legal representatives of deceased Manharlal Mohanlal Gandhi. Therefore, the petitioners are entitled to get all the properties of deceased Manharlal Mohanlal Gandhi. Deceased Manharlal Mohanlal Gandhi had executed will in favour of the petitioners bequeathing his properties to the petitioners. It is further stated that devastating earthquake took place in different parts of Gujarat including Morbi where the petitioners are residing. Under the circumstances, Government of Gujarat issued Notification by which exemption was given from making payment of court fess to the earthquake affected persons and the said notification was extended from time to time. Lastly, it was extended up to 06.04.2005. Deceased Manharlal Mohanlal Gandhi expired on 31.07.2003. The petitioners filed Misc. Civil Application No. 83 of 2004 for getting probate certificate and also filed application exhibit – 5 for getting exemption from payment of court fees on the probate application as per Government Notification.

4. The learned Civil Judge,(S.D.), Morbi dismissed

the said application *vide* order dated 31.08.2005 by which the exemption of court fees on probate application was refused, giving rise to the present petition.

5. Having heard Mr.Bhavin Satwara, learned advocate for the petitioners and Mr.K.L.Pandya, learned Assistant Government Pleader for the respondent – State of Gujarat and having perused the impugned order, according to this Court the learned trail Judge has rejected the application seeking exemption from payment of court fees on technical ground, that the petitioners have not filed affidavit. Therefore, the impugned order does not stand to scrutiny of this Court, and therefore, deserves to be quashed and set aside.

6. Mr.Bhavin Satwara, learned advocate of the petitioners, states that he will file fresh application annexing the affidavit of the petitioners, which may be directed to be decided by the learned trial Judge.

7. Mr.K.L.Pandya, learned Assistant Government Pleader, has no objection if necessary direction is issued to the learned trial Judge for deciding the application filed by the petitioners seeking exemption from payment of court fees on the ground stated in the notification.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order

dated 31.08.2005 is hereby quashed and set aside.

9. It would be open for the petitioners to file fresh application seeking exemption from the payment of the court fees annexing necessary documents i.e. Notification as well as the affidavit. If such an application is filed, the learned trial Judge shall decide the same strictly in accordance with law and having regard to the laudable object behind the notification issued by Government of Gujarat for exemption from the payment of courts fees to the earthquake affected persons.

Rule is made absolute.

Direct service is permitted.

[A.M.KAPADIA, J.]

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